

IN THE DRAWINGS

No objection to the drawings was indicated by the Examiner. As such, Applicants assume the drawings to be acceptable.

REMARKS

Claims 2-32 and 35-36 remain pending in this application.

The Examiner rejected claims 2, 3, 5, 6, 11-14, 16, 17, 21-25, 28, 29, 35, and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Wu* in view of *Wiese*. Applicant respectfully traverses this rejection.

Claim 2 is directed to a method that calls for establishing a communication channel between a first transceiver and a second transceiver in low power mode; determining, at the first transceiver, a training parameter in response to establishing the communication channel in the low power mode; performing training, at the first transceiver, based at least on the training parameter; and providing the training parameter to the second transceiver.

Even though the Examiner purports to reject claim 2 under 35 USC 103 based on the combination of *Wu* and *Wiese*, a closer inspection reveals that the Examiner has failed to establish a prima facie case of obviousness. It is well-established patent law that the claimed combination must each and every feature of the claim. Here, the Examiner acknowledges that *Wu* at least does not teach establishing the communication channel in lower power model. See Final Office Action, page 5. However, this is not the only feature that *Wu* fails to teach or disclose. Although not clearly articulated by the Examiner, the Examiner appears to argue that while *Wu* does not exactly (or identically) disclose the other features of claim 2, it discloses subject matter that is nevertheless "equivalent" to what is claimed. *Id.* at page 5.

In particular, the Examiner asserts that claim 2 features (namely determining at the first transceiver a training parameter, performing training at the first transceiver based at least on the training parameter, and providing the training parameter to the second transceiver) "may be equivalent" to the teachings of Wu, which discloses two communicating modems that each determine (but do not use) training parameters and then transmit these parameters for the other modem to use. There are several problems with the Examiner's position. As an initial matter, it is well-established that the prior art references, when considered alone or in combination, must teach each and every claimed feature exactly, not its "equivalent". See *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Here, the Examiner's "may be equivalent" test fails to comply with this well-established patent law principle. In other words, it is not legally sufficient to show an "equivalence" of a claimed feature; the prior art reference must disclose or teach the claimed feature exactly.

Another problem with the Examiner's rejection is that is not supported by the very reference upon which he relies. In Wu, each modem, for training purposes, uses signals transmitted by other modem, not its own. Put another way, *Wu* does not teach performing training based on a training parameter, wherein that training parameter is also provided to the remote station. It teaches exchanging signals for the other modem to use. Thus, clearly, the Examiner cannot rely on Wu to supply the missing claimed features.

The Examiner does not cite to any other reference to show the missing claimed features. Instead, the Examiner advances a conclusory statement that one skilled in the art, upon reading Wu, could somehow divine the missing claimed features because these features "may be equivalent" to the teachings of Wu. Such a conclusory statement is clearly deficient. Because

the Office cites *no references* to support this “obviousness” assertion, the applicant infers that the Examiner makes this assertion based on **personal knowledge**. However, no **supporting affidavit** has been made of record. The applicant respectfully requests that prior art be provided to substantiate this “obviousness” assertion or that an **affidavit** be filed in accordance with 37

C.F.R. § 1.104(d)(2), which states (emphasis added):

(2) When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference *must* be supported, when called for by the applicant, by the *affidavit* of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Consequently, the applicant respectfully and seasonably requests the Office to either (1) cite a reference in support of this position, or (2) provide a Rule 104(d)(2) affidavit from the Examiner supporting any **facts within the personal knowledge of the Examiner**, as also set forth in M.P.E.P. § 2144.03.

Claim 2 and its dependent claims are thus allowable for at least the reasons presented above. Additionally, the other pending claims, to the extent they call for one or more of the above-noted missing features, are also allowable for these reasons.

Reconsideration of the present application is respectfully requested. In light of the arguments presented above, Applicants respectfully assert that all claims are allowable. Accordingly, a Notice of Allowance is respectfully solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Houston, Texas telephone

number (713) 934-4064 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON, P.C.
CUSTOMER NO. 23720

Date:

10/3/05

By:



Ruben S. Bains, Reg. No. 46,532
10333 Richmond, Suite 1100
Houston, Texas 77042
(713) 934-7000
(713) 934-7011 (facsimile)
ATTORNEY FOR APPLICANT(S)